EXTENSION BULLETIN 214

Legal Safeguards for Your Home

AGRICULTURAL
EXTENSION SERVICE
The Ohio State University

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Prepared by Agricultural Extension Service, the Ohio State University in cooperation with the Ohio State Bar Association

CAUTION: This bulletin, as revised in December, 1961, contains statements which reflect legal principles which will not become effective in Ohio until July 1, 1962, the effective date of the Uniform Commercial Code, which was enacted by the Ohio General Assembly in 1961.

LEGAL SAFEGUARDS FOR YOUR HOME

TODAY, all of us enjoy certain rights which are protected by law. These include the rights to life, liberty, personal security, personal reputation, and to own property; however, for every right which we enjoy, we owe a corresponding duty, both to other people individually and to society as a whole.

For example, we have the *right* to operate an automobile on the highway, but we have the *duty* to operate it so as to protect the lives and property of our fellow citizens. It is the purpose of the law to find that point of balance where *rights* are protected and the corresponding *duties* are enforced.

In the United States there are several elements which go to make up the body of our law. The first of these is the Federal Constitution which limits the powers and defines the duties of the Federal Government and guarantees certain fundamental rights to the people. Then there are the constitutions of the various states. Our Ohio Constitution outlines the functions of the state government, limits it in the powers which it can exercise over the people in the state, and gives to the people certain rights in addition to those named in the Federal Constitution.

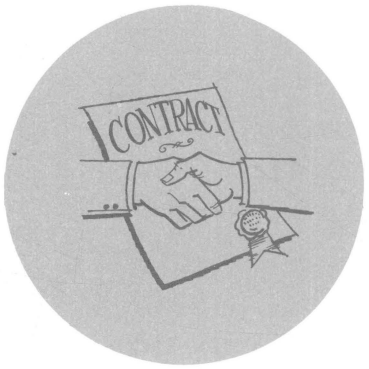
The federal and state constitutions, of course, could not embody all of the laws necessary to govern a great country. Those men who framed them did not intend that they should. The constitutions merely form the foundation on which our law is built. The largest part of our law is composed of federal statutes passed by Congress, state statutes passed by the state legislature, and city ordinances passed by the councils of the various cities and villages. These written laws govern many phases of government and of the conduct of our daily lives

It is not possible for every problem and every situation to be covered by written laws. For this reason, there is a part of the law known as the "Common Law" which is composed of court decisions on various problems. When there is no statute to govern a certain situation, the courts look to the decisions of other courts to see what they did with a similar problem. This procedure keeps the law consistent from one day to the next, yet permits the court to change the law if the old rule is outmoded.

Our laws are continually changing. Although amendments to the Constitution of the United States and the Ohio Constitution are comparatively infrequent, the statutes and ordinances are constantly being changed and brought up to date by the legislatures. What was the law on a particular subject 10 years ago may not be the law today. A lawyer makes it his business to keep abreast of the changes in the law.

The following bulletin includes brief discussions of various laws of particular interest to home managers. The material in this bulletin does not cover every aspect of the law.

This bulletin should not in any way be considered a substitute for the legal advice which a lawyer may give. We hope, however, that it will point out to the home manager some of the more common legal problems, and warn him against a few of the more important mistakes.



CONTRACTS

The law of contracts is probably the largest and surely one of the most important branches of the law. It is one with which the average person has the most contact. The contract is the foundation of all business, both large and small. Almost every week, in the course of our everyday lives, we enter into several simple contracts, therefore, we need a general idea of the fundamentals of the law of contracts.

A contract is an agreement between two or more competent persons by which each promises to do, or not to do, a particular thing in exchange for the promise of the other. At least two persons are needed to make a valid contract. A mere promise made by one person for which no promise or act is asked or expected in exchange is not a contract which the law will enforce. We shall see the reason for this later.

It is always wise to put important agreements into writing. This will avoid future misunderstanding and confusion. There is often need for contracts within a family. For example, if a father who owns a farm, makes an agreement with his son whereby the son will become a part owner at some future date, provided that he helps his father manage the farm, this agreement should be in writing. Furthermore, the father ought to make a will so that he can direct what is to be done with his interest in the farm.

When you enter into a contract be sure that you understand all of its terms before you sign it. If you don't know everything about what you are signing, you may regret that you made the contract. For your own protection you should, whenever possible, keep a copy of the contract. This enables you to refer to its terms whenever you desire.

Elements of A Valid Contract

There are four elements which must be present for a valid contract to come into existence. They are: (1) *Competent parties,* (2) *offer and acceptance,* (3) *legality,* and (4) *consideration.*

Competent Parties—Those persons whom the law considers capable of

making their own contracts are termed competent parties. In the eyes of the law, persons under 21 years of age (minors) cannot be bound by the terms of any contract except one for necessities such as food and clothing. A contract made by an adult with a minor is not wholly void, since the adult may be compelled to perform his part of the agreement, while the minor may refuse to perform his part, if he so chooses. The reason the law protects a minor in this manner is sound. Unscrupulous adults might persuade immature youths to enter into unfair or ruinous contracts.

An adult should not enter into a contract with a minor unless it be for necessities such as food and lodging. Instead he should contract with the minor's guardian under the supervision of the Probate Court. In the same manner, an insane person or one of unsound mind cannot make a binding contract except through his guardian.

Offer and Acceptance—To create a contract there must be an offer by one party and an acceptance of that offer by the other party. Generally, an acceptance must be of the offer, *as made,* for a contract to result. Any change in the proposition is normally deemed a rejection of the original offer and the making of a counter-offer. However, more complex rules govern the making of contracts for the purchase and sale of goods (a term defined by statute to include crops, animals, and other farm products) when negotiated by exchange of messages, as by mail or telegram.

Mistake, fraud, false representation, or undue influence may prevent a valid contract from being made.

Legality—The law will not enforce contracts which concern the doing of an illegal act, or which the law considers injurious to the public welfare. For an example of the latter, a railroad cannot make a contract with a passenger which relieves the railroad from paying damages if the passenger should be injured through the fault of the railroad.

Consideration—In a contract, each party must do something or promise to do something in return for the promise or act of the other party. This exchange of promises or acts is known as consideration. It may be the payment of money, the furnishing of goods, the doing of an act, or the refraining from doing an act.

If there is consideration, the law will not concern itself with the value of the consideration. For instance, contracts for the sale of goods sometimes state the price as "one dollar and other valuable consideration" or simply "one dollar." So long as that consideration is stated, the law will not ordinarily concern itself with the fact that the property is worth far more than "one dollar." The fundamental theory of consideration is that through a contract both parties expect to receive a benefit.

Classes of Contracts

Express Contracts—Contracts may be divided into two classes, express contracts and implied contracts. Express contracts are those which we generally think of as

contracts, where the offer, acceptance, and the terms of the agreement are specifically stated. These contracts, in turn, may be subdivided into written contracts and oral contracts.

Any sort of contract may be put into writing and signed by the parties; but there are certain kinds of contracts which the law requires to be written and signed by the person to be bound in order to be enforceable. Examples of such contracts are those pertaining to the sale of real estate, those which are not to be performed within one year, those dealing with the sale of goods of value greater than $500, and those by which a person undertakes to be responsible for the debts of another person.

When a contract is written and signed, the law presumes that all of the terms of the contract are included in the written document and that the written terms represent the exact agreement between the parties. In fact, a court will not permit the terms of a written contract to be challenged but will hold the parties to the agreement as expressed on paper. For that reason, and since there are many things to be considered in drawing a written contract which the average person would never think of, it is often extremely hazardous to prepare such a contract without the advice of a lawyer.

Oral contracts, or those in which all or part of the terms are contained in informal writing such as letters, are as binding as formal written contracts in all cases except in those situations listed above in which a writing is required. They are, however, much more difficult to prove if a disagreement should occur and the matter be taken to court. Difficulties will arise in proving what each party agreed to in making a verbal bargain. For this reason, business men require that all but the most simple contracts be written.

Implied Contracts—Implied contracts are those in which part of the terms are not expressly agreed upon but are based on prevailing custom. For example, when you order goods from the grocery you impliedly promise to pay the market value of the goods, although you do not need to say so. The law implies the promise on your part.

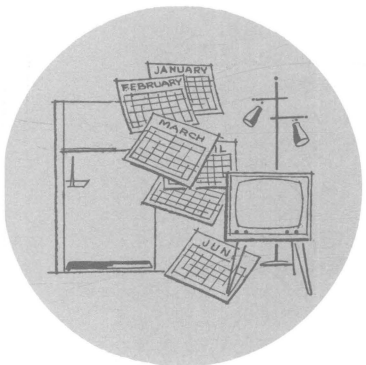
WHEN IS A CONTRACT COMPLETED?

Once a contract is made, it continues in force until both parties have done everything which the contract requires or until they mutually agree to cancel it. If you make a contract with your neighbor to sell him a radio for $25, the contract is completed when you have delivered the radio to him and he has paid you $25. If, however, after making the agreement, both of you feel that you have made a bad bargain, you can by

agreement declare the contract cancelled. Furthermore, if the radio is destroyed before it is delivered, the contract is at an end because performance has become impossible.

If, after a contract has been made, one party refuses to perform his part while the other has performed his or is ready and willing to do so, the contract is said to have been *breached.* In such a case the party willing to perform may go to court to have the situation remedied. In most cases, the only remedy is for the court to award him money damages. In some cases, however, as in a contract to buy or sell land, the court may force the unwilling party to perform his contract as he originally agreed to do. This remedy is called *specific performance.*

In many cases there are certain steps which a person must take after the other party has broken a contract before his right to sue for damages or specific performance is established. Hence, it is always advisable to consult a lawyer as soon as a breach of contract has occurred.

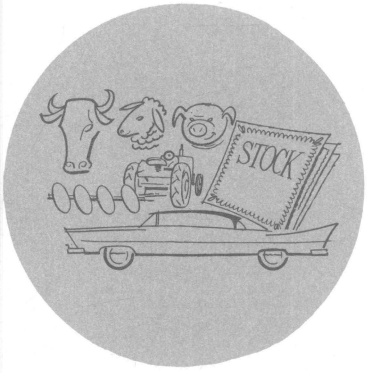


"EASY PAYMENT PLAN" CONTRACTS

Many persons purchase articles under contracts which provide that the price is to be paid in a series of installments instead of in a lump sum. There are in general two ways in which these installments or "easy payment plan" sales are arranged. One is by means of a chattel mortgage and promissory notes, which will be discussed later, and the other is by a conditional sales or installment contract.

There are many different forms in which installment sales contracts may be drawn. They all have one characteristic—the title, or the legal ownership of the goods sold under such a contract, remains with the seller and does not pass to the buyer until the amount of money named in the contract has been paid.

If you were to buy a refrigerator from a dealer under a contract whereby you were to pay for it in 24 monthly installments, title to pass when the last installment is paid, you would have possession of the refrigerator and the right to retain possession as long as the payments are kept up. However, the dealer would continue to be the legal owner of it until the full price had been paid.



PERSONAL PROPERTY

From early times property has been divided into two distinct classes—*real property* and *personal property.* Real property consists of land and the things such as buildings which are affixed to it, while all other things which are subject to private ownership are classified as personal property. Examples of personal property are: automobiles, furniture, stocks, bonds, money, bank accounts, cattle, tools, farm machinery, and clothing. Articles of personal property are known in law as chattels.

A married woman may own personal property separate and apart from her husband. When such is the case, her property cannot be made subject to debts contracted by her husband. Her husband has no rights in her personal property. Similarly, a wife has no rights in the personal property of her husband, except that she is by law entitled to support out of it.

Personal property may be held in the names of both husband and wife. When such is the case, upon the death of one, his or her share in the property will descend to his or her heirs. Exceptions are savings bonds and accounts in banks and savings institutions, which may be owned jointly, with a right of the survivor to become the owner immediately upon the death of the other owner, or they may be owned in the name of one individual, with another person named as beneficiary. Contrary to what some people think, these methods for passing ownership at death are subject to inheritance tax.

Although it is generally easy to distinguish between real and personal property, there are times when the law designates as real property articles which we might consider personal property. Houses, buildings, and other things built upon a piece of land become part of the realty and pass with the land when it is sold. Ordinary furniture, rugs, clothing, books, etc., found in houses, are personal property which we do not intend to sell when we sell the house.

There are articles of personal property which may be so permanently attached to the land or to a building that the law considers them part of the land, and they will pass with the land when it is sold. These articles are known as fixtures. One court case has held that a furnace, although it is personal property at the time you buy it, becomes a fixture and hence part of the realty when it is installed in your house. It is often difficult to determine whether an article is a fixture, or personal property. In buying and selling a home, it is always well to specify what articles are considered fixtures.

Growing crops which are planted annually, such as wheat and oats, although they are certainly attached to the land, are considered personal property to the extent that they may be sold under an oral contract. As stated earlier, contracts for the sale of an interest in real estate must be in writing. However, in buying or selling a farm it is best to specify whether the crops will be considered as a part of the land.

Disposal of Found Property—An important branch of the law of personal property concerns the rights to property which is lost by one person and found by another. The rightful owner of property, of course, has a right to it as against

everyone else. The fact that he lost the property and someone else found it does not impair that right.

On the other hand, the person who finds a lost article in a public place has a right in law to retain it against everyone except the rightful owner. The finder of a lost article incurs certain duties: to make a reasonable effort to find the true owner, to preserve the property from harm to the best of his ability, and to return it to the true owner upon demand. In other words, the old saying about "finders keepers, losers weepers," is not the law in Ohio.

A distinction must be made between property which is lost accidentally and mislaid property which is placed somewhere intentionally by the owner and then left there through forgetfulness. In the case of mislaid property, the person in charge of the place where it was left is given the right and duty to hold the property for the true owner. Thus, property left on the counter of a store is mislaid property, and the owner of the store has the right to hold it for the owner. Property dropped on the floor of the store is lost property, and the finder has the right to hold it until claimed.

Warranties on Sales and Purchases—One of the most intricate phases of the law of personal property is that dealing with sales. Ohio, along with many other states, has adopted the Uniform Commercial Code which contains numerous sections dealing with this problem alone. In this bulletin we deal with a few of the aspects of the law of sales which are more commonly met and which are the least complicated.

Comparatively few problems are connected with a so-called cash sale, which is the type of transaction that occurs when you go into a store and buy an article for cash. The most important legal problem in this connection is the matter of warranties. There is an implied warranty that the seller of goods has good title to the goods and is able to pass such title on to you.

When the seller has reason to know of the purpose for which you want the goods, and that you are relying on his judgment to furnish suitable goods, he impliedly warrants that they are fit for that purpose. For example, when you buy food from your grocer, he impliedly warrants that the food is fit for human consumption. If the goods are sold by sample, there is implied warranty that they will be in accordance with the sample. If you buy goods by description, there is an implied warranty of merchantability which means that the goods are of at least average quality. The seller is liable to you in damages, if the goods do not come up to these warranties.

In addition to implied warranties, the seller may also make express warranties for the failure of which he may also be liable in damages. But the buyer must distinguish between an express warranty and mere "sales talk." The statement of a salesman that his product is "the best on the market" is not a warranty on which he may be bound. The law recognizes such statements as mere expressions of opinion and expects the buyer to accept them as such.

If you examine goods before buying, you are expected to be aware of any reasonably apparent defects and to buy the goods with knowledge of them. There is an old adage in the law, "let the buyer beware." Although the law protects the buyer far more now than it did in past years, it still presumes that he will be reasonably careful in purchasing goods. Express warranties to be enforceable must

be made before the goods are purchased.

REAL PROPERTY

Real property consists of land and the things which are affixed to it. When dealing with real property, it is important for you to be familiar with the ways in which property is held and the words which are used to describe it. There follows a description of some of the terms used in connection with this subject.

Fee Simple Estate—When a person holds land, he is said to have an *estate* in it. There are many different kinds of estates which a person may have. The largest and most complete is a *fee simple estate.* The factor which determines what kind of estate a person has is the language of the document (either a deed or a will) through which he obtains his title.

The language usually used to pass a fee simple estate is: "to John Doe, his heirs and assigns forever." However, since 1925, the Ohio law does not require the words "heirs and assigns forever" to be included. The law of Ohio provides that the estate passed by the deed or will shall be presumed to be a fee simple unless it is otherwise clearly shown in the document.

When a person holds land in fee simple, he can sell the land or do what he wishes with it as long as he does not use it to invade the rights of others. At his death he may dispose of it as he wishes in his will, or if he made no will, it will descend to his heirs in fee simple.

The Life Estate—Another type of estate which is quite common is the *life estate.* This estate is created by a will or deed which provides that the land shall pass to "John Doe, for life, remainder to Richard Roe, his heirs and assigns, forever" or similar words. Under such a deed or will, John Doe is permitted to enjoy the ownership of the land during his life, but at his death, instead of descending to his heirs, it passes to Richard Roe in fee simple. The restrictions on a person having a life estate in land are that he cannot abuse the land so as to greatly decrease its value, and that he can only lease to another person his interest in it, which terminates at his death. John Doe cannot do anything to prevent Richard Roe from receiving the land at his death.

There are other types of estates which are not as common as those we have discussed here. If you are not sure as to what type of estate you have in land which you possess, it is advisable to consult a lawyer who may advise you of what your rights and obligations are.

Tenancy in Common—Where two or more persons own a piece of land together, so that each owns a share in the whole and not just a portion of the

land, there exists what is known as a "tenancy-in-common." An example of this is where a man dies, leaving his farm by his will to his three children. The children become tenants in common, each having a one-third interest in the whole farm.

Each may sell his one-third interest in the farm without the consent of the others, and the person who buys from him will take his place as a tenant-in-common with the others. This tenancy will continue until all three join in selling the farm to someone else, or until a division, or partition as it is known in law, is made. In our example, the three children could agree among themselves to divide the farm into three parts, each one becoming sole owner of his part, or one of them could file a suit in partition, in which case the court would probably order the land to be sold and the proceeds divided among the children.

Under the law of Ohio, when either a husband or wife sells his or her own separate land, the other spouse must sign the deed so that the person buying the land may obtain the whole title to it. This is because the law gives to a husband or wife an interest, known as *dower,* in the land of the other spouse. The statutes provide that a spouse shall have a life estate of one-third interest in all real property owned by the other spouse during marriage. This dower interest ceases at the death of the spouse owning the land, except as to all land which that spouse sold or mortgaged during marriage without procuring the signature of the other spouse to the deed or mortgage.

For example, if a married man owns a farm in his own name, his wife by law is given a dower interest in the farm as long as he lives. If he owns the farm at the time he dies, her dower interest ends and she inherits according to the laws of descent and distribution, which are discussed in a later section of this bulletin.

If, however, the husband sells the farm without having his wife sign the deed, at his death the wife acquires a one-third interest in the farm for her lifetime. The person who bought it does not have a complete title. The same thing applies to a husband's interest in his wife's land. For that reason, whenever you buy land from a person having a husband or wife living, if you want to get full title to the land you must insist that both husband and wife sign the deed.

Transfer and Recording Sales of Property—The deeds usually used in transferring real property are the *warranty deed* and the *quitclaim deed.* The warranty deed contains the statement that the property is free and clear of all encumbrances except those specifically mentioned, and promises that the grantor will reimburse the buyer, if he does not get the entire title which the deed purports to pass. The quitclaim deed merely transfers whatever interest the maker may have in the property, and contains no warranties.

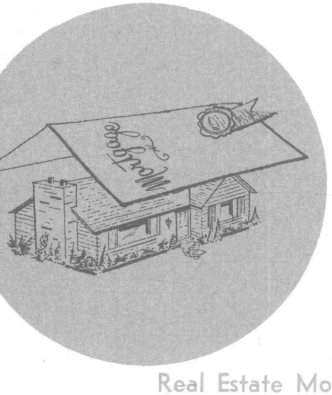
When a person receives a deed to property, he should immediately have it recorded by the County Recorder of the county in which the land is located. While the law of Ohio does not absolutely require deeds to be filed, it does make it necessary to do so if the deed is to be good against anyone who may later be fraudulently induced to buy the property from the former owner. While an unrecorded deed is good as between the parties to it, it is not good as against a third person who has no knowledge of its existence and buys the property in good faith.

Before buying a piece of property, a person should always have a lawyer examine the title to the land. Only in that way can a person be sure that he is

receiving good title to the land. There may be defects in the title which date back many years and which even the present owner may not know about. These defects in title, if not corrected, may be the source of great difficulty in the future. Never buy land unless you are assured that the chain of title is clear. Otherwise you may find yourself unable to sell the land or even to hold it against another claimant. A warranty deed is not a substitute for a title examination.

There are many legal words which can be confusing to the average person who does not have occasion to use them in his daily work. Such words as lessor, lessee, mortgagor, mortgagee, and numerous others ending in "or" and "ee" often appear in documents.

A general rule on the meaning of such words is: The person who *gives* the document or object is designated by the word ending in "or" and the person who *receives* the document or object is designated by the word ending in "ee." For example, if you sell your home, you *give* someone a deed and you become the *grantor.* The person who *receives* the deed is then known as the *grantee.* Likewise, if you *give* someone a lease on your land or house, you become the *lessor* and he becomes the *lessee.*



MORTGAGES

A mortgage is a pledge of property as security for the payment of money or the performance of some other act, with the condition that the mortgage shall be cancelled when such payment or performance is completed. A mortgage of real estate is generally known as simply a *mortgage,* while a mortgage of personal property is referred to as a *chattel mortgage.* Since the laws of Ohio are somewhat different regarding these two types of mortgages, they will be discussed separately.

Real Estate Mortgage—A real estate mortgage is in the nature of a deed; therefore, the laws of Ohio provide that the mortgage document must be signed and witnessed with the same formalities as an ordinary deed. There are two types of situations in which a mortgage is usually given: (1) when a person owning an interest in real estate wishes to borrow money and put up his interest as security, executes a mortgage of his interest in the land to the person who lends him the money; (2) when a person buys a piece of property and pays only a part of the purchase price, he may give a mortgage on the land to the seller as security for the payment of the remainder of the price.

The person who borrows the money and gives the mortgage to the lender or seller is known as the *mortgagor,* and the lender or seller to whom the mortgage is given is known as the *mortgagee.*

The theory of a mortgage is that if the condition which the mortgage is given to secure is not carried out, that is, if the money to be paid is not paid or the other thing to be performed is not done, the title to the land passes to the mortgagee. The mortgagee may enforce this right by filing suit to foreclose the mortgage. Under foreclosure proceedings, the property will be sold by the sheriff, and the mortgagee's loan paid out of the proceeds. If the selling price is insufficient to repay the loan, the mortgagor is liable for the deficiency.

In Ohio, mortgages should be recorded by filing them promptly with the County Recorder in the same manner as deeds. The law says that mortgages must be recorded in order to be protected against later mortgages and deeds.

The owner of land may give more than one mortgage on his property. The first one recorded (not necessarily first given) is the first mortgage; the second recorded is the second mortgage, and so on. The holder of the first mortgage is entitled to be reimbursed first out of the proceeds of a foreclosure sale of the land. Holders of the other mortgages can be reimbursed only out of what is left, in the order in which their mortgages were recorded. Therefore, it is wise for the holder of a mortgage to have it recorded immediately. If the property brings only enough to pay off the first mortgage, the holders of the other mortgages receive nothing from the foreclosure sale and must rely on suing the debtor.

When the debt which the mortgage was given to secure is paid off, the mortgage, of course, is cancelled. The mortgagee should sign the release form on the back of the mortgage, and the release should be filed with the County Recorder for recording, so that the records will show that the mortgage has been paid.

Chattel Mortgages—These are given generally for the same two reasons as are real estate mortgages, namely, as security for money borrowed or as security for the payment of the purchase price of the chattel. The law regards the holder of a chattel mortgage as the legal owner of the mortgaged article, although by agreement between the mortgagee and mortgagor the mortgagor may and usually does keep possession of the article and continue to use it.

The law provides formalities to be followed in executing a chattel mortgage. It also provides that the mortgage must be filed in the office of the County Recorder of the county in which the mortgagor resides, in order for it to be valid as against anyone but the two parties who made it.

As was stated in the section on "Easy Payment Plan Contracts," chattel mortgages are now widely used in place of the conditional sale contract. If you buy a refrigerator and arrange to pay for it in installments, you would give an installment note to the person who sold the refrigerator. As security for the note you would give him a chattel mortgage on the refrigerator. In this way the seller takes back, temporarily at least, the title to the refrigerator and holds it as security for the payment of the price. When the note is fully paid, the chattel mortgage is cancelled and you regain the title. But if you fail to pay the note as the payments come due, the mortgagee may foreclose the mortgage or may retake the property. In certain instances, the mortgagee may retain the property in satisfaction of the obligation, rather than causing it to be sold. Before this may be done he must notify the mortgagor in writing that he proposes to retain the property, and any mortgagor receiving such notice, who believes that a fair sale of the property would produce a greater amount than that of the debt plus expenses of sale, must object in writing to the mortgagee within thirty days after receipt of the notification, in order to require that a sale be made of the property.

Foreclosure of a chattel mortgage is quite similar to that of a real estate mortgage in that the court orders the sheriff to sell the property. The proceeds are then applied to pay off the amount due under the mortgage. If the sale brings more than the amount due to the mortgagee, the rest of the money is paid to the mortgagor. If the sale brings less than the amount due to the mortgagee, the mortgagor is liable for the deficiency, as in the case of a real estate mortgage.

Furthermore, many chattel mortgages contain provisions authorizing the mortgagee to sell the property without a foreclosure action in court.

The law of Ohio makes it a crime to sell the property which is subject to a chattel mortgage without the consent of the mortgagee and with intent to defraud him. The law further provides that it is a crime for a person to remove mortgaged chattels from the county where they are mortgaged or to conceal the chattels with intent to defraud the mortgagee.

WILLS

What will become of property upon the owner's death should be of primary interest to every man or woman, regardless of how small the amount of property he or she may own. It is a question which the law has taken great pains to answer with definiteness and certainty. In the Ohio statutes, known as the *Probate Code,* nearly 700 separate sections deal with this question alone.

When a person dies, his estate is administered under the direction of the Probate Court. Debts and administration expenses are paid from the estate, and the remaining property, both real estate and personal, descends to his heirs according to law or is distributed according to the person's wishes as expressed in his will.

The making of a will is one of the most important legal steps of a person's lifetime. The ability to make a will is not an absolute right, but is in the nature of a privilege conferred by law. In order to avail himself of the privilege, a person must make his will in a certain manner as provided by law.

The statutes regulating the making and signing of wills are set forth in the Probate Code. They include provisions as to how and where a will must be signed, how a will must be witnessed, and other requirements for making a valid will. At times, people become impatient with the technical provisions of the law. But they should remember that, in the case of wills, for example, the purpose of restrictions is not to make it difficult for a person to make a will, but to make it difficult for unscrupulous persons to defraud heirs by forging or changing a will.

In view of the many technical safeguards that must be observed, the drawing of a will is a task for a trained lawyer. Great hardships and sorrows have come to rightful heirs through errors in inexpertly drawn wills. If a person is to go to the trouble to provide for the disposition of his property by will, he should take every possible precaution against the will being defective or invalid.

The person who makes a will is called a *testator.* A testator may change his will as often as he desires, unless he becomes insane or of unsound mind. If a slight change in the will is all that is desired, that change may be made by adding to it a "codicil," which must be executed with the same formalities as the will. Or a will may be revoked entirely by executing a whole new will at a later date.

The testator may also revoke a will in other ways, such as simply destroying the paper on which the will is written. But he cannot change his will by scratching out parts of it or by writing in new provisions once he has signed it.

Upon the death of the testator, the will must be probated to take effect. Any person who has a claim against the testator or who wishes to challenge the validity of the will, must register his claim or objection early in the period of administration.

The provisions of the will are carried out by an executor under the direction of the Probate Court. An executor may either be named by the testator in the will or, if none is named or if the person named cannot act, the Court will appoint one. The duties of the executor are to pay the debts of the testator and distribute the proceeds of the estate to the heirs.

If a person does not make a will, then his or her property will be distributed to the heirs according to a plan fixed by law. This plan is set out in the Statute of Descent and Distribution. In other words, if a person doesn't make a will, the state has made one for him and he may or may not like it. It costs no more to administer an estate when a person leaves a will than when he does not. As a matter of fact, it often costs less.

A man cannot disinherit his wife by his will. If his will leaves her less than the share of the property to which she would have been entitled had he not made a will, she has the privilege of choosing to take her share under the Statute of Descent and Distribution instead of under the will. A child, however, may be disinherited in the will, if the testator shows that he intends to do so.

A child born after the making of his father's will is not disinherited unless the will shows that the father so intended, or he left his entire estate to his wife. The law provides that the after-born child shall be given its proportionate share out of the shares of any other than his wife named in the will.

Wills can easily become out-of-date. It is wise to revise them in accordance with present circumstances every 2 or 3 years.

DOMESTIC RELATIONS

One of the primary purposes of the law is to protect the family and to guard the sanctity of the home. For this purpose, we have a considerable body of law governing the relationships between husband and wife, parent and child, and guardian and ward, which are known under the general heading of the law of domestic relations.

Marriage is a civil contract in the eyes of the law. Of course, there is more to the marriage vows than this; but the law is chiefly concerned with the purely contractual aspects of marriage. Hence, when a man marries, he undertakes to support his wife and provide her with the necessities of life. The law holds him bound to do this so long as the marriage continues.

In Ohio, the law provides that the age at which persons may marry is 18 years for men and 16 years for women, although all persons under 21 years of age are required to have the consent of parents or guardian in order to obtain a marriage license. Under certain conditions when social necessity makes it desirable, the Juvenile Court may, with the consent of the parties and their parents or guardians, give consent to the marriage of persons under the minimum age limit.

The Ohio law prohibits marriage between persons who are more closely related to each other than second cousins, as well as marriages where one or both of the parties are of unsound mind or addicted to habitual drunkenness.

In Ohio no marriage may be solemnized by a minister or other officer without a marriage license. The license may be procured from the Probate Court of the county in which the prospective bride resides. It must be applied for five days or more before it is issued. The Probate Judge may, however, when good cause is shown, permit the license to be issued without waiting for the five-day period to elapse. A blood test is required before license is issued.

A husband is legally bound to furnish his wife with the necessities of life, such as food, clothing and shelter. If he refuses to perform his obligation, the law will force him to do so. Similarly, parents are legally bound to support their minor children; and when one parent dies, the duty falls entirely upon the other.

As a general rule, a minor cannot enter into a valid contract. Therefore, when a minor acquires property, by inheritance or otherwise, it must be administered by a guardian. The guardian is appointed by the Probate Court upon petition, and acts under bond and under the supervision of the court. When the parents of the minor are living, one of them usually is appointed guardian.

A minor cannot by himself bring or defend a lawsuit. It is therefore necessary that he be represented by a person who is of age. Where a general guardian has been appointed for him, the guardian can serve as his representative. If he has no guardian, the minor who brings a lawsuit must do so through a "next friend," usually his father, or his mother, if the father is dead.

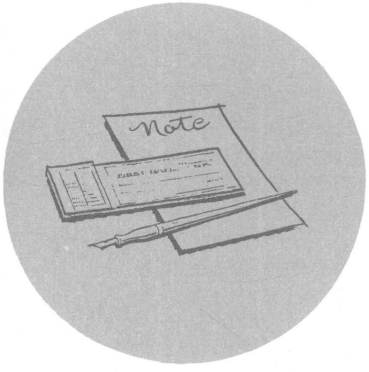
When the infant is defending a lawsuit and has no general guardian, the law requires that a "guardian ad litem," or a guardian for the purpose of the lawsuit, be appointed for him by the court. As in the case of the "next friend," the guardian ad litem is generally one of the minor's parents, if living.

The law recognizes that under ordinary circumstances, parents are entitled to the custody and control of their minor children without outside interferences. The rights of the parents in this respect, however, are not absolute. The parents by their actions or by their circumstances in life may forfeit these rights. When parents become financially unable to support their child, the court may take the child from them and place it in an institution or home.

If parents allow a child to become delinquent, the Juvenile Court may make the child a ward of the court. Thus the parents' control is subject to that of the court. Further, if parents are guilty of cruelty to their child, or if they are keeping the child in improper surroundings, they are subject to a fine and imprisonment.

The law recognizes the sanctity of the home in numerous ways. The constitution forbids anyone from searching a person's home without a warrant. The

law holds liable a relative who maliciously breaks up a home. The rules of evidence do not permit husband and wife to testify against each other in all cases. These safeguards are placed about the home for its protection.



NOTES AND CHECKS

Never leave a blank check with your signature on it in a place where an unauthorized person has access to it. If you must give someone a blank check, be sure that you have an unfaltering trust in the person. Any time your signature appears on a check, the bank has a right to assume that you have authorized the amount which the check calls for.

If you endorse a check, made payable to you, by signing your name on the back of it, your endorsement makes the check payable to the bearer. If an unauthorized person obtains possession of the check, he may be able to cash it. If, however, you endorse the check by writing on the back, "Pay to the order of John Jones," and sign your name immediately below these words, the check must in turn be endorsed by John Jones before it can be cashed. The latter type of endorsement, called a *special endorsement,* is therefore safer, especially if the check is to be sent through the mail after being endorsed.

It is wise to keep your check stubs and cancelled checks for a number of years. Cancelled checks may be helpful in proving that you have paid a particular bill, if such payment is ever questioned.

A promissory note is a written promise to pay someone a definite sum of money on a particular date or, if the note is payable in installments, on several different dates. *In signing a note, you should be extremely careful to read all of its terms.* If you are involved in a transaction in which you are in doubt as to your rights in connection with a promissory note, you should *consult your lawyer before signing.*

In Ohio, many printed note forms contain a provision substantially as follows:

> "And I do hereby authorize any Attorney-at-Law to appear for me in an action on the above note, at any time after said note becomes due, in any court of record in the United States, to waive the issuing and service of process and confess a judgment in favor of the legal holder of the above note against me, for the amount that may be due thereon, with interest at the rate therein mentioned, and costs of suit, and to waive and release all errors in said proceedings, and the right to appeal from the judgment rendered."

A note containing such a provision is called a *cognovit note.* If a person signs such a note, he should realize that the holder of the note may take a judgment against him without service of summons or other notification, and may immediately cause execution to be levied on his property. If a person learns that a judgment has been taken against him on a cognovit note, and if he thinks that he has paid

the note, or has any other proper defense, he should consult an attorney immediately so the proper steps may be taken to set aside the judgment and assert his defense.

TORTS

When one person, either intentionally or unintentionally, violates any rights which the law guarantees, the person whose rights have been violated is entitled to compensation. Many invasions of these legal rights have been considered to be wrongs against not only the individual but against society.

The law has designated the latter as crimes which are punishable by fine or imprisonment. There are other wrongs, however, which are purely civil wrongs. These have been designated in the language of the law as *torts.*

The law provides for compensating a person against whom another person has committed a tort by permitting the person wronged to sue the wrongdoer and to collect money damages.

Torts may be divided into two classifications: (1) *intentional torts,* and (2) *unintentional torts.* Intentional torts are those where a person wilfully violates the rights of another, such as by assaulting him, by trespassing on his property, or by maliciously injuring his reputation. Unintentional torts, on the other hand, are those which arise from careless or negligent acts which injure the rights of others, and are known in law under the general heading of negligence.

Torts may also be divided into two other classifications: (1) wrongs done to the person, and (2) wrongs done to property.

Wrongs Against the Person—The following are some of the more common torts which are wrongs against the person:

Assault and battery, a wilful attack upon the person and body of an individual.

Malicious prosecution, a wilful pressing of a false criminal charge.

False imprisonment, any restraint of a person's liberty without legal authority.

Defamation of character, the name of this tort is self-explanatory. If the defamation is oral, it is slander; if the defamation is in writing, it is libel.

Fraud and deceit, procuring a person to enter into a contract or to do some other act through false representations of fact.

Wrongs Done to Property—Some examples of torts against property are:

Trespass, the invasion of a person's real property.

Conversion, the unwarranted taking or other misuse of property belonging to another. If the conversion is without any claim of right whatever, it is a theft and a criminal act.

Infringement of patent or copyright, where one copies without permission an idea that has been patented or a piece of literature or music that has been copyrighted.

Wrongs Caused by Negligence—The subject of negligence is a broad one. It is based on the idea that every person owes a duty to every other person to be reasonably careful not to injure that other person or his property. When, through acting in a careless manner or through failing to take certain precautions which the law says a reasonably careful man should take, we injure the person or property of someone else, we may be guilty of a tort and make ourselves liable to a lawsuit.

For example, a person who carelessly throws a stone into a crowd and injures someone is liable for damages. A person who fails to mend his fences, because of which cattle stray upon another's land and damage crops, is liable for damages. Both are guilty of negligence.

The law recognizes that people must be more careful in certain circumstances than in others. For instance, you are under obligation to be more careful of the safety of a person who is on your land by your invitation or with your knowledge and consent than of a person who is there unknown to you as a mere trespasser. The question which the law considers in determining whether or not you were negligent in a particular instance is: Did you act as a reasonably careful person would act under the circumstances? To avoid being liable for negligence, you must act and manage your property in such a way as to be reasonably sure that harm will not come to another person or that person's property.

The law will not award damages, however, to a person who was injured through the negligence of someone else when the injured person was negligent at the same time, and that negligence contributed to his injury. In such a situation the person injured is said to be guilty of contributory negligence. Thus a person cannot be careless himself and yet expect another negligent person to take all the responsibility.

A great part of our present law of negligence has grown up around the operation of automobiles. The law says that a person who violates a traffic law or ordinance is presumed to be negligent. If he injures a pedestrian or another automobile solely through his negligence, he must pay damages.

When a driver is reckless or when a death occurs through his negligence, he may be guilty of the crimes of reckless driving or negligent homicide (second degree manslaughter). There are other cases where acts of negligence may constitute crimes as well as civil wrongs.

A person who employs another to work for him has a duty to see that his employee is not injured while at work through negligence of the employer. This negligence may consist of direct acts of the employer or of defective tools and equipment. The law requires employers hiring three or more regular employees, to contribute to the State Workmen's Compensation fund, out of which injured employees are compensated for their injuries. If the employer does not contribute to this fund, he must assure the authorities that he is in a position to compensate his employees himself.

There are times when we may do a negligent act although we are ordinarily in the habit of being careful. There is a type of insurance called *liability insurance* which will protect a person against having to pay damages for a negligent act. Every person who drives an automobile should carry automobile liability insurance to protect him in case he should injure some person or someone else's property through negligence. If a person has many accidents, however, he may find that no reputable insurance company will insure him.

Individuals often carry insurance known as *comprehensive personal liability insurance.* This protects the insured against liability to persons injured on the insured's premises, or to persons injured as a result of personal activities of the insured elsewhere. The coverage is broad but as in the case of other types of insurance the prospective purchaser should inquire about possibilities and limitations.

Similarly, a farmer who employs one or two farm hands would be wise to voluntarily participate in the State Workmen's Compensation fund or carry insurance to protect him in case injuries are sustained through his negligence or because of defective machinery or dangerous farm animals.

The law in Ohio provides that a person who is a guest in an automobile cannot recover damages from the driver for injuries caused by negligence alone. However, the driver is liable to a guest for wilful recklessness or such extreme negligence as amounts to wanton misconduct.

In general, it is the law of torts and of negligence, as well as criminal law, which make our country a safe place to live in. The chief difference between the law of torts and criminal law, as they affect the wrongdoer, is that the latter punishes him by imprisonment or by making him pay a fine, while the former forces him to pay damages to the injured person.

CONCLUSION

The purpose of this bulletin is to set forth some of the fundamental rights which the law guarantees to every person and to point out some of the most important steps which a person should take to safeguard those rights.

When you are confronted with a legal problem, the safest thing to do is to discuss it with a lawyer.

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